IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 1-3-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1623 of 2003

The State Lorry Owners' Federation
rep.by its President P.Sengodan,
87, Salem Road,
Namakkal ... Appellant/Petitioner

Vs.

The Divisional Engineer,
National Highways,
Salem - 5. ... Respondent/Respondent

This writ appeal is filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.15519 of 2001 dated 3.3.2003.

WP Prayer: Writ Petition filed under Art.226 of constitution of India praying to issuance of writ of Mandamus forbearing the respondents herein from collecting any toll tax on the vehicles passing over the new High Leval Bridge Across the River 'Thirumanimuthar' at Km 271/2 at NH 7 near Paramathi-velur.

For Appellant : Ms.Sasikala,
for Mrs.Radha Gopalan

For Respondent : Mr.P.Subramaniam,
Government Advocate

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J U D G M E N T

(Judgment of the Court was made by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 3.3.2003 made in W.P.No.15519 of 2001, in any by which the learned Judge, basing reliance on the National Highways (Fees for the use of National Highways Section and permanent project - public funded project) Rules, 1997, as amended on 4.12.2001, and in the absence of challenge to the said rule, dismissed the writ petition.

2. The said rules were brought to our notice. It is not in dispute that Rule 11 makes it clear that, *"the fee shall be collected in perpetuity by the executing agency"*. In such circumstances, as rightly observed by the learned single Judge, unelss the petitioner succeed in challenging the said rule, it cannot be said that the authorities are not having any power to collect such fee in perpetuity.

3. The learned counsel appearing for the appellant relied on the decisions reported in (2001) 8 SCC 676 (Bharathidasan University V. All-India Council for Technical Education) and (2001) 9 SCC 328 (Mandsaur Transport Association V. State of M.P.) . On going through the factual details and in view of the specific provision in the rules as mentioned above, we are of the view that the said decisions are not helpful to the case of the appellant herein. The appellant association is free to challenge the said rule, if they so desire, by filing appropriate writ petition.

With the above observation, the writ appeal is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Divisional Engineer, National Highways, Salem - 5.

+1cc to Govt. Pleader Sr 13003
+1cc to Mrs. S.Radha Gopalan, Advocate Sr 12872

MJ (CO)
km/12.3.

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